

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

**TRUSTEE'S RESPONSE TO MOTION OF
WATERFRONT PROPERTIES OF AZ, LLC
FOR RELIEF FROM AUTOMATIC STAY**

Randall L. Seaver, Trustee (“**Trustee**”), by and through his undersigned counsel, hereby submits this Response to the Motion of Waterfront Properties of AZ, LLC (“**Waterfront**”) for relief from the automatic stay.

INTRODUCTION

Waterfront has moved for relief from the automatic stay based in 11 U.S.C. §362(d)(1) and §362(d)(2). Waterfront has offered no evidence as to value of the subject condominium, an itemization of its payments on behalf of the Debtor, or whether Waterfront is indebted to the Debtor. The condominium is presently listed for \$2,950,000 (see Exhibit A hereto).

An additional and significant flaw in Waterfront’s motion is that the bankruptcy is a 50% of the LLC with Richard and Brent Olson each owing 25%. The Trustee, as the majority member of the LLC, has not consented to the action taken by Waterfront. Waterfront has not provided any evidence that this motion is brought with the appropriate corporate authority.

Finally, the bankruptcy estate owns 50% of personal property located within the condominium (outside of Waterfront). The motion makes no mention of the personal property.

ARGUMENT

Cause does not exist to grant Waterfront's Motion. **Waterfront has provided no evidence to meet its burden that the property (member interests) lacks equity.** The party seeking relief from the automatic stay is required to establish a *prima facie* case of cause for relief. *In re Planned Systems, Inc.*, 78 B.R. 852, 859-60 (Bankr. S.D. Ohio 1987).

A sufficient equity cushion in relation to the value and nature of collateral in the present market may preclude an order granting a creditor relief from the automatic stay. *In re Johnson*, 90 B.R. 973, 980 (Bankr. D. Minn. 1988); *see also First Nat'l Bank v. Turley*, 705 F.2d 1024, 1026 (8th Cir. 1983) (to obtain relief from stay, creditor must show its interest is sufficiently clear and in need of protection). A *prima facie* case may be established by showing the debtor lacks equity in the property, the value of the property is declining, the property is not adequately maintained, property taxes are not being paid, insurance coverage is inadequate, or other facts evidencing a lack of adequate protection. *In re Briggs Transp. Co.*, 780 F.2d at 1349; *In re Planned Systems, Inc.*, 78 B.R. at 860; *In re Brown*, 78 B.R. 499, 503 (Bankr. S.D. Ohio 1987). If the creditor establishes a *prima facie* case, the burden shifts to the debtor to prove adequate protection. 11 U.S.C. §362(g); *In re Planned Systems, Inc.*, 78 B.R. at 859-60. In this case, Waterfront has entirely failed to meet its burden.

Waterfront has not established that "cause" for purposes of relief from the automatic stay. Further, Waterfront has not evidenced its authority to seek the relief requested nor has it addressed the estate's interest in personal property within the condominium.

CONCLUSION

Waterfront has failed to establish a basis for any relief from stay and its motion should be denied.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: August 13, 2009

By _____

Matthew R. Burton, #210018
Attorneys for Randall L. Seaver, Trustee
100 South Fifth Street, Suite 2500
Minneapolis, Minnesota 55402-1234
(612) 332-1030

419376

Desert Wide - Scottsdale Waterfront

866-628-0413 Ext 0026

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7181 E CAMELBACK Road
Unit 1204 Building One
Scottsdale, AZ, 85251

Three Bedroom, Condo or Townhome, High Rise, Condominium, Eco-Friendly, Multi-Pane Windows, Multi-Zone HVAC, Single-Story, Guest House, Health Facility, Sauna, City View, Scenic, Near Water, Waterfront, Mountain View, Guarded, Newly Built, Community Pool, Pool, Club House, Community Spa, Spa, Pet-Friendly, Luxury

Found in Maricopa on 7181 E CAMELBACK Road Unit 1204 Building One in Scottsdale Arizona, this property has 3 bedroom(s) and 3.5 bathroom(s). This Apartment Style/Flat home was built in 2007 and is currently available at \$2,950,000.

For more information about MLS #4157300 or other homes for sale in the 85251 area of Scottsdale, please contact Staci Miles by clicking on the Request More Information button.

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\$2,950,000

Bedroom(s): 3

Bathroom(s): 3.5

Square Footage: 3860

Year Built: 2007

MLS#: 4157300

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Attributes:

Three Bedroom, Condo or Townhome, High Rise, Condominium, Eco-Friendly, Multi-Pane Windows, Multi-Zone HVAC, Single-Story, Guest House, Health Facility, Sauna, City View, Scenic, Near Water, Waterfront, Mountain View, Guarded, Newly Built, Community Pool, Pool, Club House, Community Spa, Spa, Pet-Friendly, Luxury

Community Pool:

Heated Community Pool, Heated Community Spa

Cooling System:

Refrigeration

County:

Maricopa

Features:

Dining in Great Room, Formal, Eat-in Kitchen, Multi-Pane Wndws, Sunscreen(s), Multi-Zones, Elevator, Fire Sprinklers

Fireplace:

1 Fireplace, Gas Fireplace, Fireplace Living Room

Heating System:

Electric Heat

Kitchen Amenities:

Disposal, Pantry, Kitchen Island, Range/Oven, Refrigerator, Microwave, Dishwasher

Other Rooms:

2 Master Bedrooms, Separate Bedroom Exit, Other Bedroom Walkin Closet, Other Bedroom Split, Master Bedroom Walkin Closet, Master Bedroom Sitting Room, Master Bedroom Split, Bonus/Game Room, Great Room, Guest Quarters - Separate Entrance, Exercise/Sauna Room, Den/Office

Parking/Garage:

3 Car Garage, Underground Parking, Separate Storage Area, Assigned Parking

Planned Community:

Scottsdale Waterfront

Private Pool:

No Pool

Private Spa:

Apartment Style/Flat

Property Type:

Partial Tile

Stories:

Single Level

Tax Amount:

\$16,150

Tax Year:

2008

Utilities:

SRP

Water Source:

City Water

Listing Courtesy Of: Geoffrey H. Edmunds Realty, LLC

EXHIBIT

A

tables*

[Request More Information](#)

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UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2010, I caused the following documents:

***Trustee's Response to Motion of Waterfront Properties of AZ, LLC for Relief from
Automatic Stay and Order (proposed)***

to be filed electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification pursuant to ECF and this constitutes service or notice pursuant to Local Rule 9006-1(a).

/e/ Stephanie Wood

Dated: April 15, 2010

Stephanie Wood
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030

420402

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No.: 09-50779

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ORDER

This case is before the court on the motion of Waterfront Properties of AZ, LLC for relief from the automatic stay.

Based on the motion and the file,

IT IS ORDERED:

1. The motion is denied.

Dated: _____

United States Bankruptcy Judge